

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,
Plaintiff

v.

ANDREW CAPOCCIA,
Defendant

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File No. 1:03-cr-00035-jgm-1

ORDER

(Doc. 624)

On July 29, 2010, defendant Andrew Capoccia filed a second motion to vacate, set aside, or correct sentence pursuant to the provisions of 28 U.S.C. § 2255. Doc. 612. The government subsequently filed a motion to dismiss the § 2255 petition without prejudice. Doc. 614. The motion was granted absent objection on September 3, 2010 and the 2255 motion was dismissed without prejudice. Doc. 618. Defendant Capoccia's reply to the government's motion was filed September 10, 2010 and his October 15, 2010 letter has been construed as a motion for reconsideration of the dismissal. Docs. 619, 624.

The defendant's motion for reconsideration is hereby GRANTED. Upon reconsideration, however, the Court's prior ruling is AFFIRMED. The Second Circuit Court of Appeals has remanded the defendant's case for resentencing, and certain forfeiture aspects of his sentence are still on appeal; therefore, the defendant's conviction is not final for purposes of collateral attack.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 17th
day of November, 2010.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
Senior United States District Judge